

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

JANE DOE, et al.

Plaintiffs,

vs.

HOWARD ZUCKER, et al.

Defendants.

Civil Action No.: 1:20 - CV - 0840 (BKS/CFH)

DECLARATION OF JOHN FOE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A PRELIMINARY  
INJUNCTION

1. I am one of the named plaintiffs in this lawsuit and make this declaration in support of our application for emergency relief.
2. Our son, John Foe ("John"), age 11, was born with Hirschsprung's Disease, a rare genetic disease which prevents connections between the brain and gastrointestinal system from forming.
3. As an infant, John had to undergo major gastrointestinal surgery during which surgeons removed a section of his intestine and then reattached the system back together. He has to use a prosthetic colon system that needs to be inserted every night to keep him socially continent.
4. The surgery profoundly affected his immune system. More than 70% of the immune system

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is in the gastrointestinal system.

5. John suffers from a long list of severe allergies. He is so sensitive to chemicals and metals that he cannot wear sunscreen or even drink tap water. When John drinks water that is not filtered correctly, he has cramping, diarrhea, and bleeding rash around his rectum. He has experienced the same type of reaction to dairy, fruit, and most antibiotics, among other triggers. When antibiotics are necessary, we have to check him in to a hospital first to manage his adverse symptoms of vomiting, diarrhea and dehydration which requires concurrent administration of metronidazole to minimize reaction symptoms.
  6. Another of John's known triggers is immunization. John had a severe reaction to immunization at age 3.
  7. John has not received any immunizations since the age of three on the advice of his pediatrician. Due to his serious reaction to immunization, and taking into consideration John's medical history and our family medical history (John's mother suffered paralysis after receiving the DTaP shot), John's doctor determined that he was at substantial risk of having even more severe reactions to subsequent immunization and recommended that he should not receive any more.
  8. On or about August 23, 2019, we submitted a properly certified medical exemption from our pediatrician, a physician licensed to practice medicine in New York, detailing why John
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should be exempt from further immunization requirements. My wife spoke to the school nurses and was told that all our paperwork was in order and there was no issue.

9. On September 23, 2019, my wife received a call from the Albany City School District Transportation Department letting her know that "since John's medical exemption was denied, he would not be able to take the bus the next day." We had received no notification that John's exemption was even being questioned.
10. We spent the whole afternoon on the phone. We spoke to the principal several school nurses and ultimately the Assistant Superintendent of our school district.
11. The Assistant Superintendent informed us that John could no longer attend school based on the recommendation of a consulting doctor who we had never spoken to and who has never met our son.
12. John has been unable to return to public school since September 23, 2019.
13. This has been devastating for him. John is a very social child and loved school. He was beloved by his classmates. He was an honors student, an avid participant in marching band, chorus, chess club and running club, and affectionately referred to as the "mayor" of his school.
14. John also has special needs and qualified for and received critical services under a 504 plan at school.

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15. Following his expulsion from school, the district refused to provide John with these services at home.

16. After he was expelled, John developed serious depression. He was angry, confused and humiliated by his exclusion.

17. We hired an attorney and got extensive genetic testing for John. John carries the MTHFR gene mutation from his maternal side and has several other genetic vulnerabilities that reveal why immunization is particularly dangerous for him. John's pediatrician prepared a forty-page medical exemption, providing extensive detail about why John was at risk of harm from further immunization. The exemption was submitted shortly before Thanksgiving, 2019.

18. On January 3, 2020, we received a letter from the school indicating that they'd sent the exemption letter "to the CDC" for review and had determined that it did not meet the criteria laid out in the ACIP guidelines and was therefore again denied. No detail was provided about who reviewed the letter specifically or what their specific recommendations were based on.

19. My wife and I are both teachers at schools that badly need us and which we love teaching at. We are certified only in New York, and our careers are centered in New York.

Nonetheless, our son was in such bad shape and so severely depressed by being denied the

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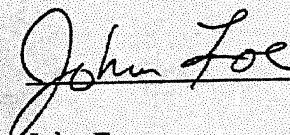
right to go to school that we started making plans to leave the state.

20. Before taking this dramatic step, we applied to a private school in our area. They accepted our medical exemption right away. However, the tuition was too high for us to handle, but this gave us hope. We sent the application to a Catholic school that was more affordable. The second school took a month to review the application and accepted it and John has been attending this private school since March 2020.

21. Though we are relieved to have a school option for John, we can't really afford private school tuition, even at the Catholic school, and our son is not getting the services he is entitled to and needs from the public school

22. John wants to return to his public school, where he was so at home and beloved.

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of August 2020

  
John Foe

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